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and Terry Rowan

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDELTON DIVISION

**Hermiston Christian Center
d/b/a Hermiston Christian School,**

Case No. 2:20-cv-01795-SU

Plaintiff,

v.

Katherine Brown, in her official capacity as Governor of the State of Oregon; **Colt Gill**, in his official Capacity as Director of the Oregon Department of Education; **Patrick Allen**, In his official capacity as Director of the Oregon Health Authority; **Joseph Fiumara, Jr.**, in his official capacity as Director for the Umatilla County Public Health Department; **Travis Hampton**, in his official capacity as Superintendent of the Oregon State Police; **Terry Rowan**, in his official capacity as Umatilla County Sheriff,

Answer to Plaintiff's First Amended Complaint for Declaratory and Injunctive Relief by Defendants Joseph Fiumara, Jr. and Terry Rowan

Demand for Jury Trial

REQUEST FOR ATTORNEY FEES

Defendants.

COME NOW Defendants Joseph Fiumara, Jr. and Terry Rowan by and through their attorneys, the Law Office of Robert E. Franz, Jr., and for answer to Plaintiff's First Amended Complaint on file herein hereby allege as follows:

1.

These Answering Defendants admit that Joseph Fiumara, Jr. is the Public Health Director for Umatilla County Public Health Department; and that Terry Rowan is the elected Sheriff of Umatilla County. Further, these Answering Defendants agree with the other Defendants that the Court refer to Executive Order 20-29; "Ready Schools, Safe Learners" Version 4.0.0 and previous versions; "Guidance for Limited In Person Instruction During Comprehensive Distance Learning" and previous versions; and "Health and Safety Guidelines for Child Care and Early Education Operating Under Covid-19" and previous versions, for an explanation of their contents; and that this case should be assigned to Judge Mosman, because this case shares common questions of law and fact with *Horizon Christian School et al. v. Brown*, No. 3:20-cv-01345-MO (D. Or.). See ECF No. 10.

2.

FRCP 8(a)(2) provides that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Plaintiff's First Amended Complaint fails to do so, and sets forth 36 pages of evidence, opinions, citations to legal cases, web pages, legal conclusions, false facts, and pages of irrelevant and fictional facts. Defendants are entitled to a dismissal of Plaintiff's First Amended Complaint for its failure to comply with FRCP 8(a)(2).

3.

While the information to properly admit or deny the factual allegations set forth in the Plaintiff's First Amended Complaint and Exhibits may be available to the answering Defendants after full discovery, including depositions, Defendants
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Joseph Fiumara, Jr. and Terry Rowan

cannot truthfully respond to such allegations without full discovery. Therefore, at this time, Defendants deny each and every allegation of Plaintiff's First Amended Complaint except as admitted in Paragraph 1. of this Answer for the reasons that Plaintiff has failed to comply with FRCP 8 in the pleading of its First Amended Complaint; and/or for the reasons that the allegations are an improper pleading of evidence; and/or that the allegations are not true; and/or that the allegations are improper opinions, citations to legal cases and web pages, and conclusions of law; and/or for the reason that as of this date, the answering Defendants do not have sufficient information to form a belief as to the truth or falsity of the allegations; and therefore, must deny them at this time.

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FOR THEIR FIRST, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

4.

At all material times, the conduct of Joseph Fiumara, Jr. and Terry Rowan did not violate clearly established statutory or constitutional rights which a reasonable person would have known; and their conduct was objectively reasonable as measured by reference to clearly established law. Therefore, Defendants Joseph Fiumara, Jr. and Terry Rowan are entitled to immunity pursuant to the doctrine of qualified immunity.

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FOR THEIR SECOND, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

5.

At all times mentioned in Plaintiff's First Amended Complaint, these answering Defendants would have made the same decisions regardless of any of the alleged acts set forth in the Plaintiff's First Amended Complaint relating to any

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Joseph Fiumara, Jr. and Terry Rowan

issues concerning the First Amendment and Fourteenth Amendment as the decisions of Defendants had nothing to do with Plaintiff's status as a religious school, and Defendants made no distinction between Plaintiff and a public school, and treated both equally and the same.

FOR THEIR THIRD, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

6.

At all times mentioned in Plaintiff's First Amended Complaint, these answering Defendants had valid, legitimate, objectively reasonable, and non-discriminatory public health and safety reasons for all actions taken and possessed no improper motive or purpose.

FOR THEIR FOURTH, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

7.

The decisions referred to in Plaintiff's First Amended Complaint on file herein were the decisions of an officer of a governing body acting in a judicial or quasi-judicial capacity, and made in the transaction of municipal corporation business; therefore, Plaintiff's exclusive remedy for its claims was to file a writ of review as set forth in ORS 34.010 to ORS 34.102 in the Circuit Court of Umatilla County, and not otherwise. Because the Plaintiff has failed to file a writ of review within the appropriate time limits, its claims are now barred, and/or this Court does not have jurisdiction over the Plaintiff's claims.

FOR THEIR FIFTH, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

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Joseph Fiumara, Jr. and Terry Rowan

8.

The Plaintiff lacks standing and/or the legal capacity to assert the claims set forth in the Plaintiff's First Amended Complaint on file herein; Plaintiff cannot seek injunctive relief prohibiting enforcement of public health laws against any entity aside from itself, and Plaintiff lacks the right or guardianship to assert the claims of others, especially minors, and the claims of adult Parents.

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FOR THEIR SIXTH, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

9.

All of the Plaintiff's claims should be stayed pursuant to the *Pullman* Abstention doctrine.

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FOR THEIR SEVENTH, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

10.

Some or all of the Claims of the Plaintiff are moot as a result of the version of Ready Schools, Safe Learners published October 30, 2020.

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FOR THEIR EIGHTH, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

11.

The Oregon Tort Claims Act and the statutory laws of the State of Oregon provide Plaintiff with proper due process of law and an adequate remedy for its claims; therefore, Plaintiff has not been denied due process of law and cannot maintain an action based upon 42 U.S.C. § 1983.

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FOR THEIR NINTH, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

12.

These answering Defendants are agents of the State of Oregon; and therefore, are entitled to immunity under the Eleventh Amendment to the Constitution of the United States, which means this suit is barred as against the moving Defendants and this Court lacks subject matter jurisdiction over the claims of the Plaintiff.

FOR THEIR TENTH, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

13.

Defendants are entitled to sovereign immunity which means this suit is barred as against the moving Defendants and this Court lacks subject matter jurisdiction.

FOR THEIR ELEVENTH, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

14.

To the extent Plaintiff suffered damages at all, Plaintiff failed to take reasonable steps to mitigate its damages, and/or unreasonably enhanced its damages.

FOR THEIR TWELFTH, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

15.

Plaintiff is barred from seeking the relief set forth in its First Amended Complaint and this Court is precluded from granting such relief because of the *Younger Abstention Doctrine*.

FOR THEIR THIRTEENTH, FURTHER AND SEPARATE ANSWER BY WAY OF AFFIRMATIVE DEFENSE, These Answering Defendants allege:

16.

These Answering Defendants fully incorporate herein as though fully set forth herein each and every affirmative defenses set forth in the "State Defendants' Answer and Defenses" filed with this Court on December 10, 2020.

WHEREFORE, having fully answered Plaintiff's First Amended Complaint, Defendants Joseph Fiumara, Jr. and Terry Rowan pray that Plaintiff's First Amended Complaint be dismissed with prejudice, and that they have judgment in their favor, and against Plaintiff, for their costs and disbursements incurred herein, together with reasonable attorney fees to be fixed by the Court pursuant to 42 U.S.C. § 1983.

DATED: Thursday, December 10, 2020.

Respectfully submitted,

By: /s/ Robert E. Franz, Jr.
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Robert E. Franz, Jr.
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(541) 741-8220
Attorneys for Defendants
Joseph Fiumara, Jr. and Terry Rowan

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Joseph Fiumara, Jr. and Terry Rowan

Jury Trial Demand

Defendants Joseph Fiumara, Jr. and Terry Rowan
hereby demand trial by jury pursuant to FRCP 38(b).

/s/ Robert E. Franz, Jr.

Robert E. Franz, Jr. OSB #730915

Attorney for Defendants

Joseph Fiumara, Jr. and Terry Rowan

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF BY DEFENDANTS JOSEPH FIUMARA, JR. AND TERRY ROWAN on Plaintiff and Co-Defendants on December 10, 2020, by notice of electronic filing using the CM/ECF System:

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